

DEC 16 2005

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

SILVIA LETICIA BAROJAS
ALEJANDRE,

Petitioner,

v.

ALBERTO R. GONZALES, Attorney
General,

Respondent.

Nos. 04-72412
04-75494

Agency No. A78-360-085

MEMORANDUM^{*}

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted December 5, 2005^{**}

Before: GOODWIN, W. FLETCHER, and FISHER, Circuit Judges.

Silvia Leticia Barojas Alejandre, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' ("BIA") April 4, 2004 decision affirming an immigration judge's ("IJ") order denying her application for

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

cancellation of removal (No. 04-72412), and its September 28, 2004 order denying her motion to reopen (No. 04-75494). To the extent we have jurisdiction it is conferred by 8 U.S.C. § 1252. We review de novo due process claims, and review for abuse of discretion the denial of a motion to reopen. *Rodriguez-Lariz v. INS*, 282 F.3d 1218, 1222 (9th Cir. 2002). We dismiss in part and deny in part the petition for review.

Barojas Alejandro's contention that the IJ erred by misapplying BIA precedent to the facts of her case "is nothing more than an argument that the IJ abused his discretion, a matter over which we have no jurisdiction."

Martinez-Rosas v. Gonzales, 424 F.3d 926, 930 (9th Cir. 2005). We furthermore lack jurisdiction to consider any direct challenge to "the subjective, discretionary determination that an alien failed to satisfy the 'exceptional and extremely unusual hardship' requirement for cancellation of removal." *Id.*

We also lack jurisdiction to review the Barojas Alejandro's contention that the IJ's denial of her request for a continuance violated her due process rights, because she failed to raise the issue before the BIA and thereby failed to exhaust her administrative remedies. *See* 8 U.S.C. § 1252(d)(1); *Barron v. Ashcroft*, 358 F.3d 674, 677 (9th Cir. 2004); *see also Rashtabadi v. INS*, 23 F.3d 1562, 1567 (9th Cir. 1994) ("A petitioner cannot obtain review of procedural errors in the

administrative process that were not raised before the agency merely by alleging that every such error violates due process.”) (citation omitted).

The BIA did not abuse its discretion in denying Petitioner’s motion to reopen because it considered the new evidence Barojas Alejandro offered regarding her son’s cognitive and hearing impairments, and acted within its broad discretion in determining that the evidence was unlikely to change the result in the case. *See Singh v. INS*, 295 F.3d 1037, 1039 (9th Cir. 2002) (The BIA’s denial of a motion to reopen shall be reversed only if it is “arbitrary, irrational or contrary to law.”).

The voluntary departure period was stayed, and that stay will expire upon issuance of the mandate. *See Desta v. Ashcroft*, 365 F.3d 741 (9th Cir. 2004).

PETITION FOR REVIEW DENIED.